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Security Council
Fifty-sixth year

Letter dated 26 October 2001 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General

I have the honour to transmit to you herewith the statement adopted on 4 October 2001 by the National People's Assembly of the Republic of Cuba in connection with the criminal terrorist act perpetrated on 6 October 1976 against a Cuban aircraft which was blown up in mid-flight off Barbados resulting in the death of the 73 people on board (see annex).

I should be grateful if you would have this letter and its annex circulated as a document of the General Assembly, under agenda item 166, and of the Security Council.

(*Signed*) Bruno **Rodríguez Parrilla**
Ambassador
Permanent Representative

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Annex to the letter dated 26 October 2001 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General

[Original: English and Spanish]

Declaration by the National Assembly of People's Power of the Republic of Cuba

Twenty-five years ago Cuba was victim to a premeditated and heinous crime that shocked the whole nation and remains in the collective memory of our people.

On October 6, 1976, a Cubana Airline aircraft was the target of a cowardly act of sabotage that blew it up in mid flight offshore Barbados. All the passengers and crewmembers on board were killed, including the young winners of the Central American and Caribbean Fencing Championship and a group of Guyanese students. The 73 victims are still awaiting justice. The main culprits have never been sanctioned, thus they have continued to carry on their criminal careers for more than four decades.

Those who conceived, planned and directed this act of genocide have a long history of terrorism that began in the 1960's under the auspices of the CIA. The role they played in the blowing-up of the Cubana aircraft and the cold-blooded murder of all those on board are well known by the U.S. government. On June 23, 1989, the Department of Justice of that country admitted that it possessed information on the case, which it had kept a secret. Despite his infamous history, including serious crimes committed on American soil, contrary to the ruling of the Attorney General's Office and in spite of the opposition of major U.S. media, one of these terrorists, Orlando Bosch, has lived in the United States for more than ten years, thanks to a decision by the then-President George Bush, and there he has continued to carry out his monstrous trade undisturbed. This man and his cronies, confident of the complete impunity they enjoy and backed up by the so-called Cuban-American National Foundation announced, in a Miami daily paper full page last August 22, that they would continue to use all means and methods available against Cuba without ruling out either terrorism or violence.

After his escape from the Venezuelan penitentiary where he was awaiting trial in the case of the Cubana aircraft, the other terrorist, Luis Posada Carriles, immediately went to work for the White House and, under direct orders from Lieut. Col. Oliver North, he became involved in the U.S. clandestine activities in Central America and, later he went on to direct various bomb-attacks against tourist resorts in Cuba and finally planned an assassination attempt against president Fidel Castro and thousands of Panamanian students meeting with him, on the occasion of last year's Ibero-American Summit. He is currently incarcerated in Panama awaiting trial on minor crimes; however, once again he is confident that his friends will ensure his freedom and impunity.

When the whole world repudiates the brutal attacks of last September 11, the United Nations adopts condemnatory resolutions and governments declare their intention to punish all such actions and avoid them ever being repeated, the National Assembly, alongside the Cuban people, condemns the attacks and reaffirms its solidarity with

the American people while demanding that the war against terrorism be genuine, responding to a real desire to eradicate these acts wherever and however they occur.

Thousands of Cubans have lost their lives or suffered irreparable damage as a result of acts of vandalism perpetrated against Cuba for more than 40 years by groups who operated, and continue to operate, from inside the U.S. territory with the complicity or tolerance of that country's authorities. Cuba, on the other hand, has never resorted to such despicable methods nor ever used force against the bandits that have committed unspeakable atrocities against our people from foreign territory. We have always pursued a principled policy. We have defended ourselves without ever violating either the ethics or the principles of international law. Additionally, we have tried to make the government in Washington fulfill its obligation to prevent these terrorist acts, by supplying them with information obtained through the generous sacrifice of heroic countrymen like those who now languish in unjust incarceration in Miami.

We have every reason, and the necessary moral strength, to demand that justice also be done in the case of the crime committed on October 6, 1976. We strongly demand that the international struggle against terrorism be sincere, consistent, free from double standards, free from racism, free from hegemonic arrogance and free from fraudulent manipulation. This is the only way to completely eradicate this scourge; the only way to pay a most deserved tribute to all victims everywhere.

Twenty-five years ago, we were brought closely together like one large family by the pain and sorrow we felt when the lives of our brothers and sisters were so ruthlessly cut short. We pledged then that they would forever stay in our hearts, that they would never be forgotten; and, here they have been with us, always present in the sacrifice, the heroism, the dignity and the creative resistance of their people.

We shall continue to denounce their assassins and demand that they be punished. We will persevere in our struggle definitely united to defend our homeland and ensure that a free, independent, just and fraternal Cuba offers a permanent tribute to them and to all our martyrs.

Socialism or Death!
Homeland or Death!
We shall overcome!

National Assembly of People's Power
Havana, October 4, 2001
"Year of the Victorious Revolution in the New Millenium"

Annex to the report of the Investigation Commission of the Government of Barbados, which investigated the sabotage of the Cubana aircraft from 28 October to 3 December 1976

Annex

[Original: English]

Report of the Investigation Commission, Part XI, chapter 8, "Alleged involvement of the United States" (excerpts from the conclusions)

The evidence of the alleged participation of the United States in the disaster of October 6 are the statements made to the Chief Superintendent Orville Durant of the Royal Police Force of Barbados by Mr. Dennis Ramdwar, Auxiliary Police Commissioner of the Trinidad and Tobago Police; a note made by Mr. Durant about an English translation of a declaration supposedly made by Freddy Lugo; and the testimony of two taxi drivers who transported Ricardo Lozano and Freddy Lugo at the time they were in Barbados.

According to Mr. Durant's testimony, Mr. Ramdwar said that Lozano had told him that he was a member of the C.I.A. and had made a verbal declaration to him in the strictest confidence; that Lozano had said that during the night of October 6 he had gone three times to see Mr. McLeod at the United States Embassy in Barbados and that Mr. McLeod was a medium-height black man; that on October 18 Lozano had made a drawing with the organization of the C.I.A.; that on October 19 Lozano had requested to see him and that he had told him that he was a member of the C.I.A. and that he had been recruited in Venezuela, and that Freddy Lugo was also a member and had been recruited by him; that Lozano also told him that they left Caracas on October 5 to do an intelligence job on a Cuban flight between Trinidad and Barbados. Mr. Durant said that he had been shown what seemed to be a copy of the drawing made by Lozano.

Mr. Maurice Firebrace, a taxi driver who works out of the Barbados airport stated that he left the airport at about noon time with two male passengers towards Bridgetown.

He stated that he would say that those men were white and he described the clothes they were wearing but when asked whether he was able to recognize them in pictures his answer was negative, saying that he had not been able to take a good look at them. He declared that it was normal for taxi drivers, when the taxi was approaching Bridgetown or entered the city, to ask the passengers what part they wanted to go to in order to drive them as close as possible to it.

Thus, when the taxi was driving along the seawall, he could understand that one of the men said "Embassy" and when he asked what part of Bridgetown they wanted to go to they said "Embassy", "Embassy". The witness said that when the taxi reached Harrisons corner and turned to take up Broad Street, one of them pointed at the building of the Canadian Imperial Bank of Commerce saying that he was going to the Embassy. Mr. Firebrace said that was the building where the United States Embassy was located and further on in his testimony he said that normally when a passenger says "Embassy", taxi drivers

understand that he means the Embassy of the United States, if another embassy is desired, the passenger will say so. The witness declared that the two passengers got off the taxi in front of the United States Embassy but he could not specify where to or in what direction they went.

Mr. Roger Pilgrim operates his taxi out of the Holiday Inn Hotel and on Wednesday, October 6, between 2 p.m. and 3 p.m. two men, one of whom he identified in the picture as Ricardo Lozano, approached him from the entrance of the hotel lobby and told him that they wanted to go to the Embassy of the United States. They got in the back-seat of the car and when the taxi reached Manning store, by the docks, they said they wanted to get off there. They paid and left the taxi and Mr. Pilgrim returned to the Holiday Inn.

According to the testimony given by Mr. Pilgrim, later on that same day, around 4.55 p.m., the same two men asked him to go back to the United States Embassy. He headed to Bridgetown but he could not drive up Broad Street because the road was blocked for the opening of Parliament. Therefore, he left them in the vicinity of the Lawyers Building and drove on. He didn't see what direction they took.

The testimony of Mr. Pilgrim is of a different character. He came to us and submitted himself to questioning. Although he said he didn't see where Ricardo Lozano and Freddy Lugo went when they got off the taxi, the circumstances indicate a visit to the Embassy of the United States. On the second occasion they had asked "to be taken again to the United States Embassy" and were taken to the vicinity. By then it was after 5 o'clock and the stores would have already been closed. Under these circumstances his testimony does support the declarations of the suspects regarding the visits to the United States Embassy.

The testimony of Mr. Firebrace by itself amounts only to a strong suspicion since he could not identify the two men he drove to Bridgetown. However, a conjecture stemming from this testimony is that, according to him, one of the men pointed at the Canadian Imperial Bank of Commerce building and said that he was going to the Embassy. Assuming that that man was Lozano or Lugo, it could be asked, when and under which circumstances had he known about the location of that Embassy.

In our view, a global assessment of the evidence provides some basis for the assertion that Lozano and Lugo visited the Embassy of the United States on October 6. No attempt was made to present evidence to the contrary and no explanation on that visit was offered. Mr. Willis insisted on the fact that according to Mr. Durant, the investigations did not establish the identity of Mr. McLeod; nobody by that name was working in the United States Embassy; nobody by that name entered Barbados in an official or any other capacity by that time; and no official conclusions were reached regarding the identity of Mr. McLeod. In fact, Mr. Willis referred to this "mysterious Mr. McLeod as if he were as ethereal as implied in his name". We would only make the observation that if any concealed transaction was being made it would not be surprising that a false name would have been used.

The Associate Attorney General

Washington, D.C. 20530

FILE: A28 851 622
A11 861 810

IN THE MATTER OF:

ORLANDO BOSCH-AVILA,

APPLICANT

In exclusion proceedings under section 235(c) before the Acting Associate Attorney General

Decision of the Acting Associate Attorney General

INTRODUCTION

Pursuant to my responsibilities as Acting Associate Attorney General, I have undertaken a review of the Immigration and Naturalization Service's (INS) decision of May 19, 1989 concerning the applications of Orlando Bosch-Avila for admission to the United States and for asylum. This review has included consideration of the decisions of the INS Regional Commissioner and the Commissioner, the submission of Bosch to the Regional Commissioner arguing against exclusion and requesting a hearing on his asylum application, and certain confidential and nonconfidential information respecting Bosch.

For 30 years Bosch has been resolute and unwavering in his advocacy of terrorist violence. He has threatened and undertaken violent terrorist acts against numerous targets, including nations friendly toward the United States and their highest officials. He has repeatedly expressed and demonstrated a willingness to cause indiscriminate injury and death. His actions have been those of a terrorist, unfettered by laws or human decency, threatening and inflicting violence without regard to the identity of his victims.

The United States cannot tolerate the inherent inhumanity of terrorism as a way of settling disputes. Appeasement of those who would use force will only breed more terrorists. We must look on terrorism as a universal evil, even if it is directed toward those with whom we have no political sympathy. As United States District Court has eloquently states with respect to this very case, "the evils of terrorism do not become less because of the participants and the cause." Orlando Bosch Avila v. Perry Rivkind, 88-973-C.V.-HOEVELER (S.D. Fla. June 1, 1988) (Order On Petition For Writ of Habeas Corpus). See also Matter of Rivero-Diaz, 12 I & N Dec. 475 (BIA, 1967).

As a result of this review, the conclusion is inescapable that it would be prejudicial to the public interest for the United States to provide a safe haven for Bosch. I have moreover concluded that he is an alien excludable from the United States under 8 U.S.C. 1182 (a) (27), (28) (ii), (28) (iii), (28) (iv) and (29), and that his applications for asylum and withholding of

deportation should be and herein are denied. In addition, pursuant to 8 U.S.C. 1225 (c), and after consultation with appropriate security agencies of the United States, I conclude that disclosure of the confidential information upon which this decision is based would be prejudicial to the public interest, safety, or security.

BACKGROUND

Orlando Bosch-Avila, age 62, is a native, citizen and national of Cuba. On July 28. 1960, he was admitted to the United States as a nonimmigrant visitor for pleasure, with authorization to remain until August 28, 1960. Bosch, however, remained in the United States without permission until about April 12, 1974. He has never been granted lawful permanent residence status.

From about 1960 to 1968, Bosch was the leader of Movimiento Insurreccional de Recuperacion Revolucionaria (MIRR), and anti-Castro terrorist organization. On or about September 16, 1968. Bosch was involved in firing a shot from a 57 mm. recoilless rifle at the Polish vessel "Polanica", which was then docked at the Port of Miami. The shell hit the side of the "Polanica", causing damage to the vessel, but no loss of life. On November 15, 1968, Bosch was convicted in the United States District Court for the Southern District of Florida of various felony offenses arising out the assault on the Polish vessel. At that time he was also convicted on an indictment that had charged him with using the telegraph to convey threats: 1) to the President of Mexico to damage and destroy Mexican ships and planes; 2) to General Francisco Franco of Spain to damage and destroy Spanish ships and planes; and 3) to Prime Minister Harold Wilson of Great Britain to damage and destroy British ships. Bosch was sentenced to ten years imprisonment, paroled in 1972, and left the United States in 1974, thereby violating the terms of his parole.

Subsequently, Bosch, while outside the United States, founded and let Coordinacion de Organizaciones Revolucionarias Unidas (CORU), an anti-Castro terrorist organization which has claimed responsibility for numerous bombings in Miami, New York, Venezuela, Panama, Mexico, Argentina, and elsewhere.

In October, 1976, Bosch was arrested in Venezuela in connection with the October 6, 1976 in- flight bombing of a civilian Cuban airliner, which resulted in the deaths of 73 men, women, and children. Though detained in Venezuela for eleven years on charges arising from this incident, he was finally acquitted. At his trial, evidence was presented that the two men convicted of homicide in connection with the bombing were in contact with Bosch both before and after the bombing.

Despite being related to a number of United States citizens or permanent resident aliens who have sought to help him obtain lawful immigration status in this country, Bosch's applications for both immigrant and non-immigrant visas were denied in 1987 by the Department of State because of his criminal history and involvement in terrorism. Bosch, nevertheless, came to the United States from Venezuela on February 18, 1988, without valid entry documents. Upon arrival, Bosch was taken into custody on an outstanding warrant for his 1974 parole violation, and he served an additional three months for his violation.

Upon release from criminal incarceration on May 17, 1988. Bosch was taken into custody by INS. At that time, the INS District Director in Miami served Bosch with a notice of temporary exclusion, alleging that he was excludable from the United States because:

- There is reason to believe he would seek to enter the United States solely, principally, or incidentally to engage in activities prejudicial to the public interest. (8 U.S.C. 1182 (a) (27)).

- That he is or has been an alien who advocates or teaches or has been a member of an organization that advocates or teaches the duty, necessity, or propriety of assaulting or killing officers of any organized government. (8 U.S.C.1182 (a) (28) (F) (ii)).

- That he is or has been an alien who advocates or teaches or has been a member of an organization that advocates or teaches the unlawful damage, injury or destruction of property. (8U.S.C. 1182 (a) (28) (F) (iii)).

- That he is or has been an alien who advocates or teaches or has been a member of an organization that advocates or teaches sabotage. (8 U.S.C. 1182 (a) (28) (F)(iv)).

- That there are reasonable grounds to believe that he probably would, after entry, engage in activities which would be prohibited by the laws of the United States relating to espionage, sabotage, public disorder, or in other activity subversive to the national interest. (8U.S.C. 1182 (a) (29)).

In addition, the notice alleged that Bosch also is excludable on the grounds that he has been convicted of a crime of moral turpitude (other than a purely political offense), 8 U.S.C. 1182 (a) (9), and that he did not possess valid entry documents. 8U.S.C. 1182 (a) (20).

Because Bosch appeared to be excludable under paragraphs (27), (28) or (29) or section 1182 (a), the INS District Director in Miami, pursuant to 8 U.S.C. 1225 (c) and 8 C.F.R. 235.8, referred the matter to the INS Regional Commissioner for review. Under section 1225(c) and its implementing regulation, the Regional Commissioner may order an alien excluded and deported, without a hearing before an immigration judge, if he is satisfied that the alien is excludable under paragraphs (27), (28) or (29) of 8 U.S.C. 1182 (a) "on the basis of information of a confidential nature, the disclosure of which the [Attorney General's designee] in the exercise of his discretion, and after consultation with the appropriate security agencies of the Government, concludes would be prejudicial to the public interest, safety, or security."

On May 19, 1989, the Regional Commissioner concluded, in what he described as a "close call," that the record did not establish that Bosch was inadmissable under 8U.S.C. 1182 (a) (27) or (29). He further concluded that while both confidential and non-confidential evidence indicated that Bosch may be excludable under 8U.S.C. 1182 (a) (28) (F), there was adequate non- confidential evidence available to obviate the need for excluding Bosch without a hearing. The Regional Commissioner's decision was affirmed by the Commissioner on the same day in a one- paragraph order.

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EVIDENCE OF EXCLUDABILITY

The files of the FBI and other government agencies contain a large quantity of documentary information which reflects that, beginning in the early 1960's Bosch held leadership positions in various anti-Castro terrorist organizations. The information contained in these files clearly and unequivocally reflects that Bosch has personally advocated, encouraged, organized and participated in acts of terrorist violence in this country as well as various other countries. While some this information is of a non-confidential nature, greater quantity, both classified and unclassified, is of a confidential nature because of the need to protect intelligence sources and methods. The information presented for my review included all of the evidentiary materials made available to INS, the material submitted by Bosch to the Regional Commissioner, and additional classified information furnished by the FBI.

What follows is a brief descriptive inventory of some of the more significant non-confidential and confidential evidentiary items that form the basis of my decision. The description of the latter necessarily has been abbreviated and sanitized to protect its confidential nature.

"Polanica", and the threats conveyed by Bosch to leaders of other countries to damage ships and planes.

NON-CONFIDENTIAL

* The record of the 1968 conviction in the United States District Court for the Southern District of Florida on charges arising out of the assault on the Polish vessel

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• An FBI interview of Bosch on August 22, 1963 concerning an August 15, 1963 MIRR bombing attack on a Cuban sugar mill.

•Documents reflecting that in June, 1974 Bosch publicly admitted having sent package bombs to Cuban Embassies in Lima, Madrid, Ottawa, and Buenos Aires. Apparently, the bomb sent to Lima injured and embassy employee, an the one sent to Madrid exploded and injured a Spanish postal employee.

• A letter entitled "Cuban Terrorism" by Orlando Bosch, issued in Prison in Caracas, January 1977.

•A radio interview of Bosch during his incarceration in Venezuela in which he advocated violent action against the Venezuelan government. Letters from Bosch to CORU requesting that Venezuelan property be bombed if he were not brought to trial.

•An interview of Bosch tape-recorded by the author of an article entitled "I Am Going to Declare War" which appeared in the news magazine "New Times", 5/13/77. Apparently, Bosch claimed CORU was responsible for over fifty bombings, but refused to take personal credit for terrorist actions within the United States because of "FBI heat".

• Excised classified documents relating to Cuba exile operations against Cuba in 1963.

• A statement by Bosch while in prison in Venezuela, to investigators for a committee of the U.S. House of Representatives investigating the assassination of President John F. Kennedy. According to the House Assassinations Committee, Bosch denied involvement in the 1976 Cuban civilian airliner bombing, but said that he approved of it. Declaring that terrorism is a necessary evil in the fight against Castro, Bosch asserted that "You have to fight violence with violence. At times you cannot avoid hurting innocent people" ||footnote 1|| Investigation of the Assassination of

President John F. Kennedy: Appendix to Hearings Before the House Select Comm. on Assassinations, 95th Cong., 2nd Sess. 89 (1979) (submitted by Gaeton J. Fonzi, investigator, and Patricia M. Orr, researcher).

||footnote 1|| The section of the Committee's report devoted to its investigation of Bosch concluded as follows: "Orlando Bosch, a zealot, turned out to be the most aggressive and volatile of the anti- Castro leaders. That alone could validly raise the question of possible association with the assassination of President Kennedy. In addition, the Committee was presented with an allegation that specifically linked him to a conspiracy, but

(continued...)

* The record of Bosch's trial in Venezuela on charges stemming from the mid-air bombing of a civilian Cuban airliner.

CONFIDENTIAL
* Information relating to Bosch's involvement, between 1961 and 1968, in more than 30 acts of sabotage and violence in the United States, Puerto Rico, Panama, and Cuba. These acts included the May 4, 1968 bombing of the British vessel "Granwood," the May 30, 1968 bombing of the Japanese vessel "Mikagesan Maru".

* Information relating to Bosch's involvement in the attempted assassination of the Cuban Ambassador in Buenos Aires, Argentina in August 1975.

* Information relating to Bosch's involvement in the September 1, 1976 bombing of the Mexican Embassy in Guatemala City, Guatemala.

* Information relating to plans by CORU in 1977 to assassinate a high-ranking Cuban diplomat.

* Information relating to the organization and command structure of CORU, and reflecting that between June 1976 and March 1977, persons associated with CORU engaged in some 16 episodes involving bombings, attempted kidnapings, assassination and attempted assassination. These episodes occurred in the United States, Spain, the Caribbean, and Central and South America.

* Information reflecting that between 1974 and 1976 in Venezuela, Bosch was in possession of bombs, explosive materials and an automatic weapon.

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* Information reflecting that the October 6, 1976 Cuban airline bombing was a CORU operation under the direction of Bosch.

* Information reflecting that Bosch, while incarcerated in Venezuela, ordered the bombing of Venezuelan facilities.

* Information reflecting that between 1979 and 1984, while incarcerated in Venezuela, Bosch was in contact with persons associated with CORU and other anti-Castro groups, and that during this period he advocated acts of violence and sabotage.

[[footnote continued on page 9]]

investigation failed to support the claim that Bosch has been in Dallas in November 1963 in the company of Lee Harvey Oswald. When asked, Bosch told the Committee he was at his home in Miami when he learned President Kennedy had been shot." Investigation of the Assassination of President John F. Kennedy: Appendix to Hearings Before the House Select Comm. on Assassinations, 95th Cong., 2nd Sess. 91-92 (1979) (submitted by Gaeton J. Fonzi, investigator, and Elizabeth J. Palmer, researcher).

[[NOTE: ABOVE REFERENCE: MIRR & ORLANDO BOSCH

Gaeton Fonzi's writings on the JFK assassination can be viewed from THE JFK MENU . Orlando Bosch is mentioned in his article titled The Last Investigation, available from the Gaeton Fonzi MENU .]]

BOSCH'S SUBMISSION

In his reply to the order of temporary exclusion, Bosch has asserted that he does not intend to engage in any activity prejudicial to the United States, that he has always opposed bombing within the United States, that he currently does not favor the commission of violent acts in the United States, and that he has not come here to engage in espionage or any other subversive activity. He contends that he is now simply an old man who has learned lessons over the years, and he wants to be with his family and to escape the threat of assassination by agents of Fidel Castro. He advances additional claims respecting his past membership in organizations such as MIRR and CORU, respecting a limited exception to excludability based on such past membership, and respecting asylum.

Perhaps most notable in his submission is his repeated disavowal of any interest to commit violent or terrorist actions in the United States, while at the same declining to disavow such activities elsewhere. Simply by looking to his own assertions here, it is evident that Bosch has not given up his

personal and violent battle. He merely says he will not wage his "war" on our soil anymore.
[[see sworn affidavit by Orlando Bosch]]

CONCLUSIONS RESPECTING EXCLUDABILITY

Our exclusion laws specifically place the burden of showing admissibility on the alien. 8 U.S.C. 1361. The United States does not have to experience the harm to the public or to the national security that may be caused by aliens such as Bosch before they may be denied our hospitality.

Based on all of the information made available to me, both confidential and non-confidential, it is clear that for more than 30 years Bosch has been resolute and unwavering in his advocacy of terrorist violence. He has formed and led organizations whose purposes include precisely the actions declared to be grounds for exclusion in 8 U.S.C. 1182 (a) (28). Over the years he has personally advocated and has been involved in terrorist attacks abroad and has advocated and been involved in bombings and sabotage. There is no substantial information to indicate that Bosch has renounced

terrorism in the service of the cause to which he has devoted his life.

Despite his current assertions of oppositions to violence in the United States, his personal history indicates that he will take violent action against any target if he believes it will advance his cause. At this moment, he may or may not truly believe that forsaking violent acts within the United States will advance that cause. But his behavior and beliefs are consistent,

and the evidence leads me inescapably to the conclusion that Bosch would instigate, plan, and participate in terrorist actions in the United States if and when it served his purposes. I therefore conclude that he is a threat to the national security.

From the foregoing it is evident that I do not agree with the suggestion in the Regional Commissioner's opinion that the exemption in 8 U.S.C. 1182 (a) (28) (I) applies in this case. Even assuming that the exemption would ever be available where, as here, exclusion is based on advocacy or teaching of unlawful violence, as opposed to mere membership in an organization that so advocates or teaches, I do not believe the evidence supports Bosch's assertion that he is and has been "actively opposed" for the past five years to the doctrine and principles of the terrorist organizations of which he has been a member.
Furthermore, I am utterly unable to conclude that his admission would be "in the public interest," as required under the exemption.

Furthermore, I am convinced that the Regional Commissioner substantially understated the weight of the evidence when he described the questions under 8 U.S.C. (a) (27) an (29) as being "close calls." The Regional Commissioner's decision cannot be squared with the indisputable and overwhelming weight of the record in Bosch's case.

The evidence leads me to conclude that Bosch seeks to enter the United States to engage in activities that would be prejudicial to the public interest and subversive to the national

security, as provided in sections (a) (27) and (29). This is so even if I were persuaded that Bosch would never commit a violent or terrorist act in this country. As he made plain in his most recent affidavit and his filings responding to the charges of excludability, he does not disavow terrorist acts committed outside the United States. Even if his repudiation were more universal and credible, Bosch would still be subject to the proscription of these sections of the statute. Indeed, his mere presence in this country, given his well publicized history of terrorist acts, would be prejudicial to the public interest and subversive to the national security.

More specifically, I conclude, based in part on information of a confidential nature, that:

1. Bosch is an excludable alien because there is reason to believe that he seeks to enter the United States incidentally to engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety or security of the United States, 8 U.S.C. 1182 (a) (27).

2. Bosch is an excludable alien both because he has personally advocated and taught the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Cuban government because of his or their official character, and because of his membership in MIRR and CORU. 8 U.S.C. (A) (28) (F) (ii).

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3. Bosch is an excludable alien because he has personally advocated and taught the unlawful damage, injury, or destruction or property, and because of his membership in MIRR and CORU.
8 U.S.C. 1182 (a) (28) (F) (iii).

4. Bosch is an excludable alien because he has personally advocated and taught sabotage, and because of his membership in MIRR and CORU. 8 U.S.C. 1182 (a) (28) (F) (iv).

5. Bosch is an excludable alien because there is reasonable ground to believe that he probably would, after entry, engage in activities which would be prohibited by the laws of the United States relating to espionage, sabotage, public disorder, or in other activity subversive to the national security, 8 U.S.C. 1182 (a) (29).

6. The exemption in section 1182 (a) (28) (I) is unavailable in a case where, as here, exclusion is based on active advocacy and teaching of violence, as opposed to mere membership in or affiliation with an organization that so advocates or teaches. The evidence here would not in any event allow Bosch to invoke that exception.

APPLICATION FOR ASYLUM AND WITHHOLDING OF DEPORTATION

Inasmuch as I have concluded that Bosch is excludable and deportable, his application for asylum is properly before me for decision. [[footnote 2]]

[[footnote 2]] While the regulations do not address specifically how and asylum application should be handled in the context of a section
(Continued...)
[[footnote continuation on page 15]]
235(c) proceeding, I believe the regulatory framework taken as a whole clearly contemplates the adjudication of an asylum claim in the same forum as the adjudication of excludability. See 8 C.F.R. 208.1 (b). Moreover, remanding Bosch's asylum claim to the District at this point would clearly frustrate the very purpose of the summary procedure provided in section 235(c). And, the Attorney General has specifically directed me to consider and dispose of Bosch's application for asylum and withholding of deportation.

I have carefully reviewed Bosch's asylum application, together with its attachments. I consider it also as an application for withholding of deportation. For purposes of deciding whether or not to grant Bosch asylum, I assume, without deciding, based on Bosch's own representations, that there is a clear probability he will be subject to persecution if he is returned to Cuba. This assumption would allow Bosch to meet the lesser standard of a well-founded fear of persecution as that term is used in Section 101(a) (42) of the Immigration and Nationality Act, and thus to meet the threshold test for the granting of asylum. 8 U.S.C. 1101 (a) (42). [[footnote 3]]
Of course, even if an individual has established a clear probability of persecution in his country or origin, this does not end the inquiry as to whether an individual will receive asylum. The regulations provide for the discretionary consideration of other factors which may lead to the conclusion
that asylum should nonetheless not be granted. In this case those considerations are dispositive.

Under the governing statute and its implementing regulations, withholding of deportation must be denied if an individual has been convicted of a particularly serious crime and, therefore, constitutes a danger to the community of the United States. 8 U.S.C. 1253 (h) (2) (B). Bosch's 1968 conviction of a particularly serious crime by itself makes him ineligible for withholding of deportation. In addition, the conclusions reached in the foregoing section respecting Bosch's long history of support for and active participation in terrorist activities and organizations, confirms my belief that he constitutes a danger to the community. For these reasons, in the exercise of discretion, he denied asylum.
[[footnote 4]]
An additional ground for denial of asylum and withholding of deportation is that there are "reasonable grounds for regarding the alien as a danger to the security of the United States."
8 U.S.C. 1253 (h) (2) (D), 8 C.F.R. 208.8 (f) (l) (vi). Based on my review of the confidential information in this case, as described in previous sections of this opinion, I find that Bosch's presence in the United States does not constitute such a danger.

[[footnote 3]] Given the assumption, there is no need to request an opinion from the Bureau of Human Rights and Humanitarian Affairs, as would ordinarily be appropriate if this matter were before the Immigration and Naturalization Service or the Executive Office for Immigration Review.
8 C.F.R. 208.7, 208.10 (b).

[[footnote 4]] Under the applicable regulations, the District Director is required to deny asylum to an alien convicted of a particularly serious crime. See 8 C.F.R. 208.8 (f) (l) (iv). But see Arauz v. Rivkind, 845 F.2d 271 (11th Cir., 1988) (immigration judge must consider other evidence presented by alien as well as prior conviction in deciding whether asylum will be granted).

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Finally, the confidential information considered in the course of adjudicating the exclusion order leads me to believe that Dr. Bosch has committed serious nonpolitical crimes outside the United States prior to his last arrival here. This
too is a sufficient basis to deny his application for withholding of deportation and to support a discretionary denial of asylum. 8 U.S.C. 1253 (h) (2) (C). See Matter of MacMullen, Int. Dec. 2967 (BIA, May 25, 1984).

Any of the three bases for denying asylum and withholding of deportation described above would be sufficient standing alone to bar Bosch from the relief he seeks. Considered cumulatively, they are more than sufficient to outweigh the consideration I have given to Bosch's fear of persecution. In light of Bosch's extensive involvement in terrorist activities and organizations, his declaration that he would not engage in terrorist activities in the United States is not credible. Further, even if he limited his activities to the advocacy of terrorist acts by others outside the United States, there is a substantial risk of retaliation aimed against this country or its citizens. The United States cannot grant shelter to someone who will, from that shelter, advocate the visitation of injury and death upon the property or person of innocent civilians. The security of this nation is affected by its ability to urge credible other nations to refuse aid and shelter to terrorists, whose target we too often become. We could not shelter Dr. Bosch and maintain our credibility in this respect.

CONFIDENTIALITY

Pursuant to 8 U.S.C. 1225(c) and after consultation with the appropriate security agencies of the Government, I conclude that disclosure of the confidential information upon which I have relied would be prejudicial to the public interest, safety, or security.

CONCLUSION

For the reasons set forth above, it is this date hereby ORDERED that Orlando Bosch-Avila be excluded and deported from the United States. It is further ORDERED that his applications for asylum and withholding of deportation under 8 U.S.C. 1158 and 1253(h), respectively, be denied.

Jan 23 1989
Date

Joe D. Whitley
Acting Associate Attorney General

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached RESPONDENTS NOTICE OF FILING OF DECISION OF ACTING ASSOCIATE ATTORNEY GENERAL were served on counsel for the petitioner, by first class mail, on June 30, 1989. The copies were mailed to:

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July 20, 1990, Friday, Late Edition - Final

SECTION: Section A: Page 26, Column 1; Editorial Desk

The Bosch Case Does Violence to Justice

The release from jail of Orlando Bosch, convicted of terrorist violence and officially deemed a most undesirable alien, is a startling example of political justice. The Justice Department, under no legal compulsion but conspicuous political pressure, has let him out, winning cheers from local politicians - and squandering American credibility on issues of terrorism.

Dr. Bosch, a Cuban pediatrician known more for bombings than medicine, has been a hero in the anti-Castro communities of South Florida. He was imprisoned two decades ago for planting bombs on ships and firing a bazooka at a Polish freighter in Miami's harbor. Later he jumped parole and fled to Latin America, where U.S. authorities say he engaged in numerous anti-Cuban bombings. He returned illegally two years ago and was held for deportation. The Government says that only Cuba is willing to accept him.

There's a growing revulsion about terrorism even among the bitterest Cuban exiles, but Senator Connie Mack, Representative Ileana Ros-Lehtinen and other politicians have lobbied intensely for Dr. Bosch's release. President Bush's son Jeb, a Republican leader in South Florida, joined the political chorus. Their cries were heard. Justice got the prisoner to accept a form of house arrest and agree not to consort with violent people. As soon as he was released, however, Dr. Bosch vowed to conduct himself as he pleased during his daily three hours outside his home.

Justice contends lamely that its hand was forced by a Federal judge who seemed to be pressing for his release. But Judge William Hoeveler, who last November emphatically affirmed the department's power to lock up a deportable alien, had merely inquired whether the Government intended to jail Dr. Bosch indefinitely.

In the name of fighting terrorism, the United States sent the Air Force to bomb Libya and the Army to invade Panama. Yet now the Bush Administration coddles one of the hemisphere's most notorious terrorists. And for what reason? The only one evident is currying favor in South Florida.

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SECTION: EDITORIAL PAGE; Pg. 12

A terrorist test for Bush

President Bush is fending off an embarrassing bid by some in Miami's Cuban-American community to prevent the deportation of the godfather of anti-Castro terrorism, Orlando Bosch. The president preempted an inappropriate lobbying effort by Ileana Ros-Lehtinen, a Republican congressional candidate, telling her the deportation is "not a presidential matter."

The June deportation order describes Bosch as "having repeatedly expressed and demonstrated a willingness to cause indiscriminate injury and death."

The 62-year-old Cuban-born political fanatic barely bothers to deny that charge. In a reply to the Immigration and Naturalization Service, he wrote, "Churchill said that wars are, unfortunately, a competition of cruelties. And Thomas Jefferson said the tree of liberty has to be unfailingly watered with the blood of tyrants, heroes and innocents, which are its natural fertilizer."

Bosch is in a class with terrorists such as Abu Nidal. There is overwhelming evidence that he masterminded the 1976 bombing of a Cuban airliner taking off from Barbados that killed 73. He spent 11 years in jail in Venezuela for that atrocity.

Bosch's partner in the airliner bombing was Luis Posada Carriles, freed from jail in Venezuela to become a logistics officer in the support team supplying the CIA-backed contras in San Salvador in 1986. Posada disappeared from view after the Hasenfus supply flight was shot down and the Iran-contra affair began to unravel.

Cuban exiles in Miami are divided about Bosch. Some, especially from the older generation, are fanatic in their support. Others acknowledge that right-wing terrorism is as execrable as any other terrorism, though few state that position openly, lest they become targets.

The Bosch-Posada case showed how the US can sink into an association with terrorism. If Bush allows Bosch's deportation to go forward, he will regain some of the moral authority to criticize terrorism.

22A The Herald WEDNESDAY, AUGUST 22, 2001

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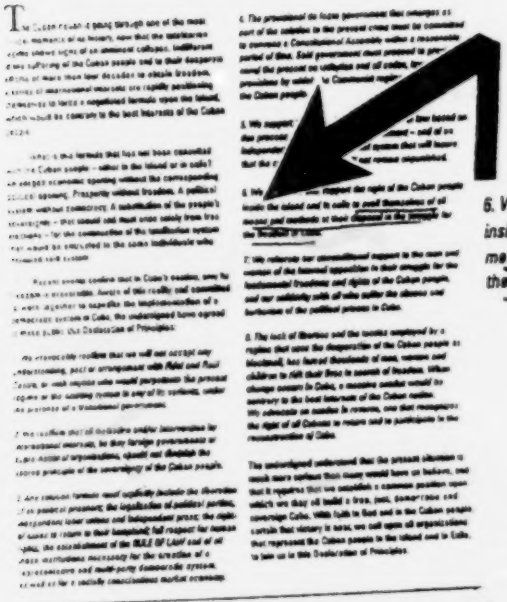
Declaration *of* Principles

To the Cubans and the Public Opinion



6. We recognize and support the right of the Cuban people inside the island and in exile to avail themselves of all means and methods at their disposal in the struggle for the freedom of Cuba.

Cuban Patriotic Forum

Cuban Unity
Armando Pérez-Roura
Juan M. Ruiz

Cuban Medical Association in Exile
Dr. Enrique Huertas

Democratic Independent Cuba (C.I.D.)
Hubert Matos B.

World Federation of Cuban Former Political Prisoners
Eugenio Llamera

Veteran's Association of the Bay of Pigs (Brigade 2506)
Juan Pérez-Franco

Mothers and Women Against Repression (M.A.R.)
Sylvia G. Iriondo
Ileana A. Puig

Cuban Municipalities in Exile
Rvdo. Guillermo A. Revuelta

Protagonist Party of the People
Dr. Orlando Bosch Ávila

Dr. Alberto M. Hernández
Diego Suárez
Feliciano Foyo
Horacio García
Elpidio Núñez
Luis Zúñiga
Eusebio Peñalver
Dr. Antonio Jorge
Luis González Infante

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Exile ad exhorts anti-Castro hard line

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Exile-group ad demands no compromising against Castro re

munities. In fact, Más Santos said, he agreed with the principles in the Declaration of Principles because they are nearly identical to the foundation's own principles.